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Proposed Rules – Page 3411 - 3426
Federal Emergency Management Agency
44 CFR Part 206
Disaster Assistance; Federal Assistance to Individuals and Households
RIN 3067-AD25

Date: March 8, 2002

RE: Illinois IFG Review Comments of FEMA Proposed Rules
44 CFR Part 206

Contact Individuals:

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Issue #1:

(Page 3 of 31, 1st paragraph)

“We invite comment from the public on the tension between the need to consolidate and streamline the activities which are authorized by the new version of 42 U.S.C. 5174, on the one hand, and the need to ensure the availability of an active State role in the process, on the other hand.”

Comment: The main focus of consolidation and streamlining of program activity should be to ensure that disaster victims are provided with more prompt, equitable and eligible disaster relief than that provided for by current processes. Additionally, an active State role should be continued when this legislation is implemented. The State has a responsibility to their constituents, both those affected by the disaster and the taxpayers. The State will continue to contribute 25% of the funding for Provision (e) “Other Assistance” of this program, thereby placing a fiscal investment on the State and its taxpayers.

Issue #2:

(Page 3 of 31, 3rd paragraph)

FEMA “believes that there is implicit authority to retain a rule that calls for possible State management of the temporary direct housing authority of the Stafford Act. We solicit input from the public on this aspect of the proposed rule”.

Comment: This aspect of the legislation [42 U.S.C. 5174 (c) (1) (B)] deals with the State administering what has commonly been referred to as a “mobile home program”. This option should continue to be available to any State which desires to implement this aspect (temporary direct housing assistance) of the legislation. This proposed rule indicates that funding will be provided by FEMA at 100% for this assistance type including site construction and development. However, FEMA funding for site construction and development will only be available when FEMA “determines that it is necessary for the Federal government to assume this obligation”

FEMA should include in this rule the criteria which FEMA will apply to determine if assuming the cost of site construction and development is in the best interest of the Federal government.

In addition, this document indicates that a State must provide a "management plan" (page 10 of 31) in order to administer temporary direct housing assistance. It is unclear whether this "management plan" is

part of the proposed Memorandum of Understanding (MOU) or whether it is a separate document (we believe it is) that must be submitted by the State and approved by FEMA. Please clarify in the proposed rule (Subpart D) what is the intent of FEMA with regard to the requirement for this "management plan".

Issue #3:

(Page 4 of 31, 1st paragraph)

FEMA has "included a provision in the proposed rule that would limit temporary housing assistance generally (rather than only in the case of the provision of 'direct' housing assistance) to no more than 18 months. We would appreciate comments from the public on this aspect of the proposed rule".

Comment: This State's consensus is that using the "general" application of 18 months as opposed to the "only" application of 18 months is better suited to the administration of this program. This time frame should generally be sufficient for family circumstances to have stabilized after having been effected by a major disaster or emergency.

However, FEMA or a State should not use this 18 month period to extend the program by accepting "late" appeal requests from applicants pertaining to prior eligibility decisions on other forms of program assistance. The 60 day appeal time frame should be strictly enforced.

Also, it should be clarified whether a State will be allowed to "close" the disaster even if the 18 month time frame has not expired? The 18 month time frame is mainly for the issuance of temporary housing assistance (which is funded 100% by FEMA), therefore, once all appeal time frames have expired for applicants under the "Other Assistance (e) portion of this statute, can the State close out the disaster based on that State's level of participation?

Issue #4:

(Page 5 of 31, 2nd paragraph)

The new version of 42 U.S.C. 5174 (c) (2) contains a \$5,000 cap for housing repair assistance. FEMA is concerned that this cap "might imprudently tie our hands in our administration of this provision of the revised legislation. Therefore, we ask for public comments on the housing repair authority generally, and on the \$5,000 cap in particular."

Comment: This State believes that this “cap” should only be applied to the “initial” assistance received by an applicant under 42 U.S.C. 5174 (c) (2) (repair assistance) prior to an eligibility determination by SBA. If an applicant is subsequently unable to obtain an SBA loan, or receives an insufficient loan amount, the applicant would then be eligible for additional assistance under this provision up to the maximum amount of assistance. Limiting this assistance to a total of \$5,000 per applicant would cause a significant number of applicants, generally those with the most need, to have substantial “unmet” needs.

Also, please clarify if applicants who are unable to qualify for 42 U.S.C. 5174 (c) (3) (B) (i.e., replacement assistance) are eligible for this provision (housing repair assistance) of the legislation if their home cannot be replaced for \$10,000 “in its entirety”. This State believes that an applicant should be eligible under 42 U.S.C. 5174 (c) (2) (housing repair assistance) if they do not qualify for replacement assistance, up to the maximum program amount of assistance.

Issue #5:

(Page 5 of 31, 3rd paragraph)

42 U.S.C. 5174 (c) (3) (B) (replacement housing assistance) places the level of assistance at a cap of \$10,000.

Comment # : As we understand it, to be eligible for this assistance, the applicant must be able to replace the destroyed owner-occupied residence “in its entirety” for \$10,000 or less. This is a very financially restrictive provision of the program. We are unsure what the rationale is for this significant limitation on the applicant’s ability to recover from a major disaster or emergency. Few applicant/owners will be able to replace their destroyed homes with the \$10,000 cap on this form of assistance.

While FEMA’s proposed rule must address this aspect of 42 U.S.C. 5174, as is currently structured, we recommend that FEMA pursue a congressional amendment to make this provision less financially restrictive (provide assistance to the maximum assistance level) and thus more available to meet serious housing needs of disaster or emergency victims.

Issue #6:

(Page 6 of 31, 4th paragraph)

New 42 U.S.C. 5174 (d) (2) describes the process for disposal of temporary housing units and the related obligations of purchasers of the units to purchase “hazard insurance” and “flood insurance”.

Comment: 42 U.S.C. 5174 (d) (2) (A) (iv) [Sale to Occupant]
42 U.S.C. 5174 (d) (2) (B) (ii) (II) [Sale to State, other governmental agency or voluntary organization]

This State concurs with the current versions of the above statutory provisions of 42 U.S.C. 5174. The occupant, State, other governmental agency or voluntary organization purchasing the unit should, as proposed by FEMA, be required to purchase a homeowners policy as stated by FEMA's objective to interpret "hazard insurance" as "a mandate to obtain a standard homeowners insurance policy". If the unit is to be placed in a SFHA, the occupant, State, other governmental agency or voluntary organization should also be required to maintain a flood insurance policy as proposed by FEMA.

42 U.S.C. 5174 (d) (2) (B) (i) [Sale to any person]

This State concurs with the current version of the above statutory provision of 42 U.S.C. 5174, as interpreted by FEMA. The "any person" should not be subjected to these requirements. This person was not a recipient of federal disaster assistance and should not have a maintenance requirement as it pertains to flood insurance or be required to purchase hazard insurance.

Issue #7:

(Page 7 of 31, 3rd paragraph)

FEMA interprets the various flood insurance purchase mandates of 42 U.S.C. 5174 to apply only when a housing unit is located in or placed in a designated special flood hazard area. "In light of the difference between the different flood insurance purchase provisions within this new statutory provision, we invite comments from the public on our interpretation of this issue."

Comment: This State concurs with FEMA's interpretation that the various flood insurance mandates are only applicable when a housing unit is located or to be placed in a designated special flood hazard area.

Issue #8

(Page 8 of 31, 1st paragraph)

FEMA "proposes to eliminate the GFIP and restore the responsibility for the flood insurance purchase requirement back to the individual or household receiving the federal assistance".

Comment: We do not concur with FEMA's above proposal. Because of the intent of previous legislation relative to the requirements for purchase and maintenance of flood insurance, the current GFIP system that is utilized by the IFG Program should be utilized by the revised statute. Applicants should not have to be encumbered with this additional expense out of their own resources at the time of a disaster. This position is in line with the philosophy of helping stabilize family circumstances following Presidentially-declared emergencies and major disasters.

If GFIP is utilized, reflect this in the proposed rule under 206.101 (k) (3) (i).

For information purposes this State's tracking of 1,636 applicants (responsible for purchasing flood insurance) over 4 federal disasters shows that 521 applicants failed to comply with the requirement resulting in a 32% non-compliance rate..

Issue #9

(Page 8 of 31, 4th paragraph)

"We would be interested in hearing from members of the public their reaction to this provision of the proposed rule, especially as it relates to the mandate of the Privacy Act."

Comment: The language contained in this proposed rule indicates that information will be shared with a State "in order for the States to make available any additional State and local assistance to the individuals and households".

This State concurs with the above. However, the language should be expanded to included that FEMA processing systems and applicant information will be available to the State if the State is assisting in the administration/management/financial portions of the "Other Assistance (e)" portion of this statute. The provision should not apply to only when the State is providing additional assistance.

Issue #10:

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Regulatory Planning and Review

"Because this proposed rule would not have a direct impact on small entities, we have determined that there is no need for FEMA to prepare an initial regulatory impact analysis relating to this proposed rule under the Regulatory Flexibility Act. We invite comments from the public on this determination."

Comment: This State agrees that there is no impact on small entities as this proposed rule is to assist individuals and households with disaster related losses.

Issue #11:

(Page 14 of 31)

Assessment of Regulation on Families

FEMA has "determined that this proposed rule is consistent with section 654 . . . implementation of the rule would help to stabilize family circumstances . . ."

Comment: This State partially agrees with this comment. FEMA is helping to stabilize families who have been in a disaster. However, if the \$5,000 cap is not increased [see U.S.C. 5174 (c) (2) (C)] there could be a significant number of individuals and households which would have a substantial unmet need because of this cap.

Issue #12:

(Page 16 of 31)

Executive Order 13132, Federalism

Based on FEMA's extensive consultations with representatives of a number of States, and based on our determination that the proposed rule will not have "substantial direct effects on the States", we believe the publication of this proposed rule is consistent with the terms of EO 13132. We invite comment from State and local officials on this important issue.

Comment: NEMA has participated in these discussions and there doesn't appear to be a substantial number of States who are against the implementation of this proposed rule.

Issue #13:

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206.101 (l) Citizenship Requirement

Comment: Will failure to comply with this requirement limit the disaster assistance level of coverage in subsequent disasters? If yes, this should be reflected in 206.107 Recovery of Funds.